IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Civil Revision No.1535 of 2006

Date of Decision: September 18, 2007

Haji Abdul Rashid Bhat .....Petitioner

Versus

Shri Jawahar Lal .....Respondent

CORAM:- HON'BLE MR.JUSTICE S. D. ANAND

Present: Mr.Paramjit Batta, Advocate for the petitioner.

Mr.Sumit Goel, Advocate for respondent No.3.

S. D. ANAND, J.

1. The petitioner filed an application under Order 9 Rule 3 of the Code of Civil Procedure for the setting aside of ex parte decree dated 12.10.1999. That application was dismissed in default on 2.8.2003. The petitioner applied for restoration of that application on an averment that the counsel had inadvertently noted on his brief and law diary that the matter had been adjourned to 2.9.2003. That application for restoration was filed on 2.9.2003 only.

2. The learned Trial Court declined the application with an observation that the petitioner had not buttressed its plea by the production of the law diary and brief of the learned counsel representing him.

3. It is common ground that no issues came to be framed about the sufficiency or otherwise of the grounds for the restoration of that

application. By the very nature of things, there was no occasion for the petitioner to produce the brief or law diary of the learned counsel representing him. In that view of things, the learned Trial Court could not have recorded a finding that the law diary and brief of the learned counsel had not been produced. The impugned order shall stand set aside. It is ordered that the learned Trial Court shall dispose of the application, preferred by the petitioner for the restoration of the plea filed by him under Order 9 Rule 13 of the Code of Civil Procedure for the setting aside of the ex parte decree, afresh after framing proper issues and affording an opportunity to the parties to adduce evidence in support of their respective pleas.

4. The parties, through their learned counsel, are directed to appear before the learned Trial Court on 10.10.2007. The learned Trial Court shall dispose of the application within one month from 10.10.2007.

(S. D. ANAND)
JUDGE

September 18, 2007
SRM

Note: Whether referred to reporter or not? Yes/No